

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

RACETRAC PETROLEUM, INC.,

Opposer,

VS.

ETW CORPORATION,

Applicant.

Opposition No. 117,623

Trademark: RACEWAY and
Design, Serial No. 75/321,745

12-23-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #77

**OPPOSITION TO APPLICANT’S MOTION
TO EXTEND TESTIMONY PERIOD**

Opposer, RaceTrac Petroleum, Inc., objects to the sixth rescheduling of applicant's testimony period in this case. The applicant has extended its testimony-taking period five times. The first date its testimony period was to close was June 19, 2002. Applicant extended that time on consent of Opposer's counsel and on condition that applicant provide Opposer's counsel with requested discovery responses on June 18, 2001. Applicant's responses were not forthcoming. Applicant moved for another extension on July 12, 2002, again on August 23, 2002, again on September 13, 2002, again on October 11, 2002, again on November 8, 2002, and now again on December 10, 2002. The only reason ever cited for these delays was counsel's press of business.

By opposition counsel's October 30, 2002 letter to Ms. Murphy, she was requested to respond to discovery requests that were served on her client months before. She had asked

for additional time to respond to Opposer's discovery requests, which were then out of time by almost a month.

Opposer had served discovery requests on applicant's counsel on August 13, 2001 and November 19, 2001. No objections were made thereto. On November 19, Opposer's counsel confirmed that applicant's counsel had been given additional time to respond to the discovery requests served on August 13, 2001 and that Opposer's counsel expected responses to that discovery. (See Declaration of Joan L. Dillon ("Dillon Decl.") ¶ 3, Ex. A.) On February 13, 2002, Opposer's counsel sent a letter to applicant's counsel indicating that discovery had closed and that Opposer wished to have the responses. (See Dillon Decl. ¶ 4, Ex. B.) On March 4, applicant's counsel indicated that she would look into getting the discovery responses to Opposer's counsel in advance of Opposer's testimony taking. No responses have been forthcoming.

On March 11, 2002, applicant's counsel called Opposer's counsel, asking Opposer's counsel to postpone the testimony deposition of Opposer's witness in return for which Opposer's counsel would be provided with the discovery requested. (See Dillon Decl. ¶ 5, Ex. C.) Opposer's counsel confirmed this also by her letter of the same date. (See Dillon Decl. ¶ 6, Ex. D.)

On March 13, 2002, Opposer's counsel wrote that it had withheld a Motion to Compel due to assurances that responses would be received. (See Dillon Decl. ¶ 7, Ex. E.) Opposer has taken its testimony and has attempted to diligently pursue this opposition. Opposer is concerned because, to date, it has not received responses to its discovery requests even though it had been assured it would.

Opposer's counsel is also now concerned that applicant will wish to place into evidence during its testimony period evidence of sales or marketing which may have occurred only in the last several months preceding the taking of testimony and that at the time when its testimony was originally due, it did not have and could not use such information and evidence to its advantage.

Accordingly, Opposer is concerned that it will be prejudiced by the continued delays by applicant and its counsel. For these reasons, Opposer opposes this motion and requests that the Board deny this motion and not grant further motions to extend and that applicant be put to the task of either taking its testimony or withdrawing its application.

Dated: December _____, 2002

Respectfully submitted,

RACETRAC PETROLEUM, INC.

By: 

Joan L. Dillon

KILPATRICK STOCKTON LLP

1100 Peachtree Street, Suite 2800

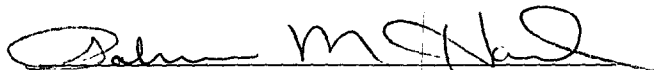
Atlanta, Georgia 30309-4530

(404) 815-6533

Attorneys for Opposer, RaceTrac Petroleum,
Inc.

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Assistant Commissioner of Patents and Trademarks, Attention: BOX TTAB - NO FEE, 2900 Crystal Drive, Arlington, Virginia 22202-3514 on December 19, 2002.



Patricia M. Hand

Secretary to Joan L. Dillon

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

RACETRAC PETROLEUM, INC.,

Opposer,

vs.

ETW CORPORATION,

Applicant.

Opposition No. 117,623

Trademark: **RACEWAY** and
Design, Serial No. 75/321,745

CERTIFICATE OF SERVICE

12-23-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #77

This is to certify that the undersigned has this date served a true and correct copy of the within and foregoing "OPPOSITION TO APPLICANT'S MOTION TO EXTEND TESTIMONY PERIOD" upon counsel for Applicant ETW Corporation, by depositing a copy of same in the United States First Class Mail, in a properly addressed envelope with adequate postage affixed thereon, addressed as follows:

Ms. Barbara A. Murphy
Adduci, Mastriani & Schaumberg LLP
1200 "17th" Street, N.W., 5th Floor
Washington, D.C. 20036

and by also personally serving Ms. Murphy.

Dated, this 19 day of December, 2002.

By: 

Joan L. Dillon
KILPATRICK STOCKTON LLP
1100 Peachtree Street, N.W., Suite 2800
Atlanta, Georgia 30309
(404) 815-6533

Attorneys for Opposer RaceTrac
Petroleum, Inc.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

RACETRAC PETROLEUM,

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Opposition Nos. 117,623

DECLARATION OF JOAN L. DILLON

12-23-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #77

I, Joan L. Dillon, declare under penalty of perjury as follows:

1. My name is Joan L. Dillon, and I am a partner at Kilpatrick Stockton LLP and trademark counsel for RaceTrac Petroleum. I make this Declaration in support of Opposer RaceTrac Petroleum's opposition to registration of the mark RACE WAY (and design) by Applicant ETW Corporation. The facts set forth in this Declaration are based upon my personal knowledge and on business records maintained by Kilpatrick Stockton LLP in the ordinary course of business by employees under my supervision and control.

2. Opposer served interrogatories on Applicant on August 13, 2001. Because the parties were conducting settlement discussions, I allowed Applicant additional time to respond to Opposer's interrogatories.

3. In a November 19, 2001 letter to Applicant's counsel, Ms. Barbara A. Murphy, (attached hereto as Exhibit A) I confirmed that Applicant's counsel had been given an extension of time to respond to discovery. I also requested responses from Applicant to Opposer's August 13, 2001 interrogatories and served requests for the production of documents on Applicant.

4. In a February 13, 2002 letter to Ms. Murphy (attached hereto as Exhibit B), I indicated that the discovery period had closed and that Applicant had failed to respond to discovery served on August 13 and November 19, 2001, and I requested that Applicant respond to these outstanding discovery requests.

5. On March 11, 2002, Ms. Murphy called me to ask for my consent to postpone the testimony deposition of Opposer's witness, and in return, Ms. Murphy promised to respond to the outstanding discovery requests. A copy of the memorandum I drafted documenting this call is attached hereto as Exhibit C.

6. In a letter dated March 11, 2002 from Ms. Murphy (attached hereto as Exhibit D), she confirmed the March 11 telephone conversation and indicated that discovery would be provided in advance of the rescheduled March 25, 2002 testimony deposition.

7. In a March 13, 2002 letter in response to Ms. Murphy's March 11 letter (attached hereto as Exhibit E), I explained that Opposer had withheld filing a motion to compel responses to discovery due to Ms. Murphy's assurances that responses would be forthcoming.

8. As of this date, I have still not received any responses to the discovery served on Applicant on August 13 and November 19, 2001.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19 day of December 2002


Joan L. Dillon
Kilpatrick Stockton LLP



KILPATRICK
STOCKTON LLP

Attorneys at Law

A

Suite 2800
1100 Peachtree Street
Atlanta, Georgia 30309-4530
Telephone: 404.815.6500
Facsimile: 404.815.6555
Web site: www.KilpatrickStockton.com

November 19, 2001

JOAN L. DILLON
E-mail: JDillon@KilpatrickStockton.com
Direct Dial: 404.815.6533

VIA FACSIMILE (202) 466-2006
ORIGINAL BY U.S. FIRST CLASS MAIL

Ms. Barbara A. Murphy
Adduci, Mastriani & Schaumberg LLP
1200 "17th" Street, N.W., 5th Floor
Washington, D.C. 20036

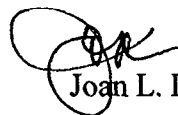
Re: Opposition - Racetrac Petroleum, Inc., Opposer, vs. ETW Corporation,
Applicant, Serial No. 75/321,745 RACE WAY and Design
Opposition No. 117,623, Trademark Trial and Appeal Board
Our Ref. No. 33317-204062

Dear Barbara:

It appears that my client has had time now to review and to thoroughly consider the outstanding settlement offer made by you on behalf of your client. Accordingly, it appears we are going to go forward with the opposition to the registration of your client's mark. I recall that there are discovery requests outstanding, served by us on August 13, 2001, and to which a response was due September 12, 2001. We gave you additional time to respond during the discovery period for the reason that we had hoped that perhaps some settlement or acceptable accommodation could be made.

At this point, we are requesting that you supply us with your client's responses to previously-served discovery. We are also supplementing those Interrogatories previously served, with a First Set of Requests for Production of Documents. We note our discovery period closes on **December 16, 2001**, and accordingly, we would appreciate your getting the responses in within the next week or so, or perhaps agreeing to a stipulated extension of the discovery periods, perhaps another three months, to March 16, 2002. Please give me a call after you have had a chance to consider this and let me know how you would propose to approach this.

Cordially,


Joan L. Dillon


JLD/jnh
Enclosure

cc: Racetrac Petroleum, Inc.

1260523.1

ATLANTA AUGUSTA BRUSSELS CHARLOTTE LONDON MIAMI RALEIGH RESTON STOCKHOLM WASHINGTON WINSTON-SALEM

B

 **KILPATRICK
STOCKTON LLP**
Attorneys at Law

Suite 2800
1100 Peachtree Street
Atlanta, Georgia 30309-4530
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Web site: www.KilpatrickStockton.com

February 13, 2002

JOAN L. DILLON
E-mail: JDillon@KilpatrickStockton.com
Direct Dial: 404.815.6533 Direct Facsimile: 404.541.3180

VIA FACSIMILE (202) 466-2006
ORIGINAL BY U.S. FIRST CLASS MAIL

Ms. Barbara A. Murphy
Adduci, Mastriani & Schaumberg LLP
1200 "17th" Street, N.W., 5th Floor
Washington, D.C. 20036

Re: Opposition - Racetrac Petroleum, Inc., Opposer, vs. ETW Corporation,
Applicant, Serial No. 75/321,745 RACE WAY and Design
Opposition No. 117,623, Trademark Trial and Appeal Board
Our Ref. No. 33317-204062

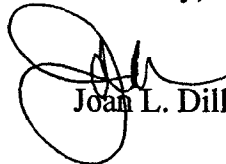
Dear Barbara:

We note that discovery has closed in connection with this Opposition. We had given you additional time to respond to outstanding recovery requests served by us in August 2001. On November 19, 2001, I asked that you get the responses to us.

I have not had any responses nor have I heard from you about this and would appreciate your letting me know within the next couple of days when I might expect your responses, noting that our testimony period opens in a very few days.

I would like to have your discovery responses within a week or so, presumably you have worked with them. If you have not, we assume then that we can get your permission to extend our testimony period until we have received the benefit of your responses. I look forward to hearing from you.

Cordially,


Joan L. Dillon

JLD/sts

cc: Racetrac Petroleum, Inc.
1303403.1



Attorneys at Law

1100 Peachtree Street, Suite 2800

Atlanta, Georgia 30309-4530

Telephone: 404.815.6500

Facsimile: 404.815.6555

Web site: www.KilpatrickStockton.com

March 11, 2002

E-mail: JDillon@KilpatrickStockton.com

Direct Dial: 404-815-6533

Direct Facsimile: 404-541-3180

• **Memorandum**

TO: FILE

FROM: Joan L. Dillon
Atlanta Office - 20th Floor

RE: **Opposition No. 117,623 - TM: RACE WAY & Design, SN75/321,745**
Racetrac Petroleum, Inc., Opposer, v. ETW Corporation, Applicant
Trademark Trial and Appeal Board
Our Ref. No. 33317-204062

On March 11, 2002 at 2:59 PM, Barbara Murphy, counsel for Applicant, asking if I would postpone the testimony deposition of Jeff Hassman, scheduled for Tuesday, March 12, 2002 at 1:00 PM, to a day during the week of March 25, 2002, and in return for which she would provide me with the requested discovery from her client. I tentatively agreed to do so, subject to the client's approval. I promised I would get to her about that. I told her I would like a facsimile from her indicating that she was prepared to consent to the extension and that in return for my obtaining it, she would get us the requested production.

JLD/jnh
1316971.1

ADDUCI, MASTRIANI & SCHAUMBERG, L.L.P.

ATTORNEYS AT LAW

V. JAMES ADDUCI II
LOUIS S. MASTRIANI
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BARBARA A. MURPHY
HARVEY B. FOX
GREGORY C. ANTHE
STEVEN E. ADKINS
WILL R. LEONARD
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MAUREEN F. BROWNE
MICHAEL L. DOANE
MICHAEL G. McMANUS*
DAVID F. NICKEL*
SARAH E. HAMBLIN*
MARK R. LEVENTHAL
*ADMITTED TO A BAR OTHER THAN D.C.

1200 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036
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www.adduci.com

OF COUNSEL

ROBERT A. WESTERLUND
RAYMOND H.J. POWELL, JR.*
PHILIP I. ROBINS

March 11, 2002

VIA FACSIMILE

Joan L. Dillon, Esq.
Kilpatrick Stockton LLP
1100 Peachtree Street
Suite 2800
Atlanta, Georgia 30309-4503

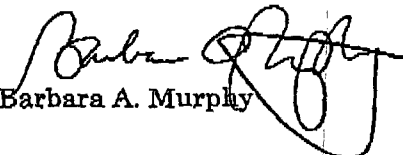
Re: Opposition No. 117,623,
Racetrac Petroleum, Inc. v. ETW Corp.
Trademark: RACEWAY and Design, Ser. No. 75/321,745

Dear Joan:

Pursuant to our telephone conversation today, we requested that you postpone the testimonial deposition scheduled for Tuesday, March 12th, until some time during the week of March 25th. This deposition was scheduled last week, with the hope of completing it during the Opposer's testimony period, which would otherwise expire on March 16, 2002. In the interim, we hope to have discovery responses to you in advance of the deposition, with the goal of having them to you next week.

Please contact me with any questions.

Sincerely,


Barbara A. Murphy

BAM:ss
ETW300102



**KILPATRICK
STOCKTON LLP**

Attorneys at Law

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Suite 2800
1100 Peachtree Street
Atlanta, Georgia 30309-4530
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Web site: www.KilpatrickStockton.com

March 13, 2002

JOAN L. DILLON
E-mail: JDillon@KilpatrickStockton.com
Direct Dial: 404.815.6533 Direct Facsimile: 404.541.3180

VIA FACSIMILE (202) 466-2006
ORIGINAL BY U.S. FIRST CLASS MAIL

Ms. Barbara A. Murphy
Adduci, Mastriani & Schaumberg LLP
1200 "17th" Street, N.W., 5th Floor
Washington, D.C. 20036

Re: **Opposition - Racetrac Petroleum, Inc., Opposer, vs. ETW Corporation,**
Applicant, Serial No. 75/321,745 RACE WAY and Design
Opposition No. 117,623, Trademark Trial and Appeal Board
Our Ref. No. 33317-204062

Dear Barbara:

Thank you for your March 11, 2002 letter. I am glad that the client was able to accommodate you with its schedule. I have represented our consented extension of time, because I did not want you to be squeezed on your time. A copy of the extension request is enclosed. Neither did I want the Office to, in some excess of technicality, rule that we had taken testimony out of time. We now look forward to receipt of the responses to the outstanding interrogatories and document requests. I had prepared, as represented, a motion to compel these responses, but have withheld filing it upon your assurances that we should be receiving them shortly.

At present now, and in accordance with the client's request and your agreement, the deposition is scheduled for March 27, 2002 at 1:00 p.m. in our offices. We are enclosing a separate formal notice.

Cordially,


Joan L. Dillon

JLD/jnh

Enclosure

cc: Racetrac Petroleum, Inc.
1317872.1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

RACETRAC PETROLEUM, INC.,

Opposer,

vs.

ETW CORPORATION,

Applicant.

Opposition No. 117,623

Trademark: RACE WAY and
Design, Serial No. 75/321,745

RESCHEDULED NOTICE OF TESTIMONY
DEPOSITION OF JEFF HASSMAN

PLEASE TAKE NOTICE, that beginning at 1:00 p.m. on March 27, 2002, the undersigned will take the testimony deposition, upon oral examination, of Jeff Hassman at the offices of Opposer's counsel, Kilpatrick Stockton LLP, 1100 Peachtree Street, Suite 2800, Atlanta, Georgia 30309-4530. The deposition will take place before a court reporter for all purposes permitted by the Federal Rules of Civil Procedure and the Trademark Rules of Practice. You are invited to attend.

Dated: March 13, 2002

Respectfully submitted,

RACETRAC PETROLEUM, INC.

By: 

Joan L. Dillon
KILPATRICK STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309-4530
(404) 815-6533

Attorneys for Opposer, Racetrac Petroleum,
Inc.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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Opposer,

vs.

ETW CORPORATION,

Applicant.

Opposition No. 117,623

Trademark: RACE WAY and
Design, Serial No. 75/321,745

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served a true and correct copy of the within and foregoing "**RESCHEDULED NOTICE OF TESTIMONY DEPOSITION OF JEFF HASSMAN**" upon counsel for Applicant ETW Corporation, by depositing a copy of same in the United States First Class Mail, in a properly addressed envelope with adequate postage affixed thereon, addressed as follows:

Ms. Barbara A. Murphy
Adduci, Mastriani & Schaumberg LLP
1200 "17th" Street, N.W., 5th Floor
Washington, D.C. 20036

Dated, this 13th day of March, 2002.

By: _____

Joan L. Dillon
KILPATRICK STOCKTON LLP
1100 Peachtree Street, N.W., Suite 2800
Atlanta, Georgia 30309
(404) 815-6533

Attorneys for Opposer Racetrac
Petroleum, Inc.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

RACETRAC PETROLEUM, INC.,)	
)	
Opposer,)	Opposition No. 117,623
)	
vs.)	Trademark: RACE WAY and
)	Design, Serial No. 75/321,745
ETW CORPORATION,)	
)	
Applicant.)	
<hr style="border: 0.5px solid black;"/>		

**REQUEST FOR EXTENSION OF TIME FOR TAKING
TESTIMONY DEPOSITION, AND RESETTING TIMES**

The parties had conferred, and Opposer had noticed the testimony deposition of its party principal to occur during the original thirty (30) day testimony period set by the Board's June 1, 2001 scheduling notice. Applicant's counsel could not attend that testimony taking and wished to attend, and accordingly, the parties mutually agreed to set back the time within which Opposer could take testimony to March 30, 2002, the testimony taking now scheduled to take place on March 27, 2002.

A copy of Applicant's counsel's March 11, 2002 letter to Opposer's counsel expressly requesting the set back of the testimony to the week of March 25, 2002 is attached.

In the meantime, Opposer's counsel had prepared a motion to compel answers to its First Set of Interrogatories to Applicant and its First Set of Requests for Production of Documents and Things to Applicant and had, upon the assurances received from Applicant's

counsel, withheld filing the motion in this case pending receipt from Applicant of its responses to the outstanding discovery within the next week or two.

Resetting of these dates is respectfully requested. If granted, this would reschedule the times as follows:

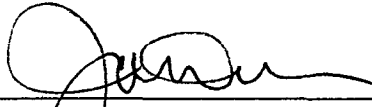
	<u>Present Date</u>	<u>New Date</u>
THE PERIOD FOR DISCOVERY TO CLOSE:	CLOSED	CLOSED
30-day Testimony period for party in position of plaintiff to close (opening thirty (30) days prior thereto)	March 16, 2002	March 30, 2002
30-day Testimony period for party in position of defendant to close (opening thirty (30) days prior thereto)	May 15, 2002	May 30, 2002
15-day Rebuttal testimony period to close (opening fifteen (15) days prior thereto)	June 29, 2002	July 13, 2002

This resetting has been expressly consented to by Applicant's counsel, as represented, and a copy of this Request is being sent concurrently thereto.

Dated: March 13, 2002

Respectfully submitted,

RACETRAC PETROLEUM, INC.

By: 
Joan L. Dillon
KILPATRICK STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309-4530
(404) 815-6533

Attorneys for Opposer, Racetrac Petroleum, Inc.

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO: ASSISTANT COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE ARLINGTON, VA 22202-3513

on March 13, 2002

JOAN L. DILLON, BY HER SECRETARY

SIGNED Joanne Bellefleur

DATE March 13, 2002

ADDUCI, MASTRIANI & SCHAUMBERG, L.L.P.

ATTORNEYS AT LAW

1200 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036
Telephone: (202) 467-6300
Facsimile: (202) 466-2006
e-mail: ams@adduci.com
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OF COUNSEL

ROBERT A. WESTERLUND
RAYMOND H.J. POWELL, JR.
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V. JAMES ADDUCI II
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MARK R. LEVENTHAL
ADMITTED TO A BAR OTHER THAN D.C.

March 11, 2002

VIA FACSIMILE

Joan L. Dillon, Esq.
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1100 Peachtree Street
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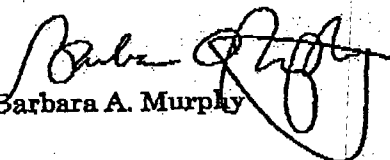
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Please contact me with any questions.

Sincerely,


Barbara A. Murphy

BAM:ss
ETW200102

3/11/02-T/c & MS Murphy.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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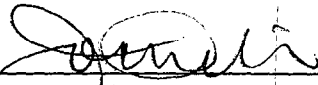
CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served a true and correct copy of the within and foregoing "REQUEST FOR EXTENSION OF TIME FOR TAKING TESTIMONY DEPOSITIONS, AND RESETTING TIMES" upon counsel for Applicant ETW Corporation, by depositing a copy of same in the United States First Class Mail, in a properly addressed envelope with adequate postage affixed thereon, addressed as follows:

Ms. Barbara A. Murphy
Adduci, Mastriani & Schaumberg LLP
Attorneys at Law
1200 "17th" Street, N.W., 5th Floor
Washington, D.C. 20036

Dated, this 13th day of March, 2002.

By: _____


Joan L. Dillon
KILPATRICK STOCKTON LLP
1100 Peachtree Street, N.W., Suite 2800
Atlanta, Georgia 30309
(404) 815-6533

Attorneys for Opposer Racetrac
Petroleum, Inc.